

118TH CONGRESS  
1ST SESSION

# H. R. 3420

To protect the privacy of personal reproductive or sexual health information,  
and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 17, 2023

Ms. JACOBS (for herself, Mr. CONNOLLY, Mr. HUFFMAN, Mr. GRIJALVA, Ms. BONAMICI, Mr. SHERMAN, Ms. BARRAGÁN, Ms. ESCOBAR, Ms. WILD, Mr. SWALWELL, Mr. VEASEY, Ms. GARCIA of Texas, Ms. WILLIAMS of Georgia, Mr. MOULTON, Mr. VARGAS, Mr. PAYNE, Ms. STANSBURY, Mr. BOWMAN, Mr. CASTRO of Texas, Ms. WILSON of Florida, Ms. MOORE of Wisconsin, Mr. ALLRED, Ms. ROSS, Ms. CROCKETT, Mr. DOGETT, Mr. CÁRDENAS, Mr. TRONE, Mr. GOTTHEIMER, Ms. MENG, Mr. TORRES of New York, Ms. BROWNLEY, Mr. TONKO, Mr. DESAULNIER, Mr. CASTEN, Mr. CARTER of Louisiana, Mr. PAPPAS, Ms. SCANLON, Mr. MORELLE, Ms. VELÁZQUEZ, Mr. SMITH of Washington, Ms. JAYAPAL, Mrs. TRAHAN, Ms. PRESSLEY, Ms. MCCOLLUM, Ms. LOIS FRANKEL of Florida, Mr. COHEN, Ms. TITUS, Ms. SEWELL, Ms. LEE of California, Ms. TOKUDA, Ms. CHU, Mr. KHANNA, Mr. KEATING, Ms. CLARKE of New York, Ms. JACKSON LEE, Mr. QUIGLEY, Mrs. FLETCHER, Ms. NORTON, Ms. SHERRILL, Mr. SCHIFF, Ms. MATSUI, Mrs. TORRES of California, Mrs. NAPOLITANO, Mrs. HAYES, Ms. BROWN, Mr. POCAN, Mrs. MCCLELLAN, Ms. LEGER FERNANDEZ, Mr. MEEKS, Mr. PANETTA, Mr. TAKANO, Mr. KRISHNAMOORTHY, Ms. SPANBERGER, Ms. LOFGREN, Ms. KAMLAGER-DOVE, Mr. CROW, Ms. ESHOO, Ms. BALINT, Ms. MANNING, Mr. JOHNSON of Georgia, Ms. KUSTER, Mr. PHILLIPS, Ms. PETTERSEN, Mr. JACKSON of Illinois, Mr. CARBAJAL, Ms. WEXTON, Mr. GREEN of Texas, Ms. SALINAS, Mrs. CHERFILUS-McCORMICK, Ms. PELOSI, Mrs. WATSON COLEMAN, and Ms. PORTER) introduced the following bill; which was referred to the Committee on Energy and Commerce

# A BILL

To protect the privacy of personal reproductive or sexual health information, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “My Body, My Data  
5       Act of 2023”.

6       **SEC. 2. MINIMIZATION.**

7       (a) MINIMIZATION OF COLLECTING, RETAINING,  
8       USING, AND DISCLOSING.—A regulated entity may not  
9       collect, retain, use, or disclose personal reproductive or  
10      sexual health information, except as is strictly necessary  
11      to provide a product or service that the individual to whom  
12      such information relates has requested from such regu-  
13      lated entity.

14      (b) MINIMIZATION OF EMPLOYEE ACCESS.—A regu-  
15      lated entity shall restrict access to personal reproductive  
16      or sexual health information by the employees or service  
17      providers of such regulated entity to such employees or  
18      service providers for which access is necessary to provide  
19      a product or service that the individual to whom such in-  
20      formation relates has requested from such regulated enti-  
21      ty.

1 **SEC. 3. RIGHT OF ACCESS, CORRECTION, AND DELETION.**

2 (a) RIGHT OF ACCESS.—

3 (1) IN GENERAL.—A regulated entity shall  
4 make available a reasonable mechanism by which an  
5 individual, upon a verified request, may access—

6 (A) any personal reproductive or sexual  
7 health information relating to such individual  
8 that is retained by such regulated entity, in-  
9 cluding—

10 (i) in the case of such information  
11 that such regulated entity collected from  
12 third parties, how and from which specific  
13 third parties such regulated entity collected  
14 such information; and

15 (ii) such information that such regu-  
16 lated entity inferred about such individual;  
17 and

18 (B) a list of the specific third parties to  
19 which such regulated entity has disclosed any  
20 personal reproductive or sexual health informa-  
21 tion relating to such individual.

22 (2) FORMAT.—A regulated entity shall make  
23 the information described in paragraph (1) available  
24 in both a human-readable format and a structured,  
25 interoperable, and machine-readable format.

1       (b) RIGHT OF CORRECTION.—A regulated entity  
2 shall make available a reasonable mechanism by which an  
3 individual, upon a verified request, may direct the correc-  
4 tion of any inaccurate personal reproductive or sexual  
5 health information relating to such individual that is re-  
6 tained by such regulated entity or the service providers  
7 of such regulated entity, including any such information  
8 that such regulated entity collected from a third party or  
9 inferred from other information retained by such regu-  
10 lated entity.

11       (c) RIGHT OF DELETION.—A regulated entity shall  
12 make available a reasonable mechanism by which an indi-  
13 vidual, upon a verified request, may direct the deletion of  
14 any personal reproductive or sexual health information re-  
15 lating to such individual that is retained by such regulated  
16 entity and the service providers of such regulated entity,  
17 including any such information that such regulated entity  
18 collected from a third party or inferred from other infor-  
19 mation retained by such regulated entity.

20       (d) GENERAL PROVISIONS.—

21           (1) REASONABLE MECHANISM DEFINED.—In  
22 this section, the term “reasonable mechanism”  
23 means, with respect to a regulated entity and a right  
24 under this section, a mechanism that—

1 (A) is provided in the primary manner  
2 through which such regulated entity provides  
3 the goods or services of such regulated entity;

4 (B) is easy to use and prominently avail-  
5 able; and

6 (C) includes an online means of exercising  
7 such right.

8 (2) TIMELINE FOR COMPLYING WITH RE-  
9 QUESTS.—A regulated entity shall comply with a  
10 verified request received under this section without  
11 undue delay and not later than 15 days after the  
12 date on which the requesting individual submits the  
13 verified request.

14 (3) FEES PROHIBITED.—A regulated entity  
15 may not charge a fee to an individual for a request  
16 made under this section.

17 (4) RULES OF CONSTRUCTION.—Nothing in  
18 this section shall be construed to require a regulated  
19 entity to—

20 (A) take an action that would convert in-  
21 formation that is not personal information into  
22 personal information;

23 (B) collect or retain personal information  
24 that such regulated entity would otherwise not  
25 collect or retain; or

1 (C) retain personal information longer  
2 than such regulated entity would otherwise re-  
3 tain such information.

4 **SEC. 4. PRIVACY POLICY.**

5 (a) **POLICY REQUIRED.**—A regulated entity shall  
6 maintain a privacy policy relating to the practices of such  
7 regulated entity regarding the collecting, retaining, using,  
8 and disclosing of personal reproductive or sexual health  
9 information.

10 (b) **PUBLICATION REQUIRED.**—A regulated entity  
11 shall prominently publish the privacy policy required by  
12 subsection (a) on the website of such regulated entity.

13 (c) **CONTENTS.**—The privacy policy required by sub-  
14 section (a) shall be clear and conspicuous and shall con-  
15 tain, at a minimum, the following:

16 (1) A description of the practices of the regu-  
17 lated entity regarding the collecting, retaining,  
18 using, and disclosing of personal reproductive or sex-  
19 ual health information.

20 (2) A concise statement of the categories of  
21 such information collected, retained, used, or dis-  
22 closed by the regulated entity.

23 (3) A concise statement, for each such category,  
24 of the purposes of such regulated entity for the col-

1 lecting, retaining, using, or disclosing of such infor-  
2 mation.

3 (4) A list of the specific third parties to which  
4 such regulated entity discloses such information, and  
5 a concise statement of the purposes for which such  
6 regulated entity discloses such information, including  
7 how such information may be used by each such  
8 third party.

9 (5) A list of the specific third parties from  
10 which such regulated entity has collected such infor-  
11 mation, and a concise statement of the purposes for  
12 which such regulated entity collects such informa-  
13 tion.

14 (6) A concise statement describing the extent to  
15 which individuals may exercise control over the col-  
16 lecting, retaining, using, and disclosing of personal  
17 reproductive or sexual health information by such  
18 regulated entity, the steps an individual is required  
19 to take to implement such controls, and direct links  
20 to such controls.

21 (7) A concise statement describing the efforts  
22 of the regulated entity to protect personal reproduc-  
23 tive or sexual health information from unauthorized  
24 disclosure.

1 **SEC. 5. PROHIBITION AGAINST RETALIATION.**

2 A regulated entity may not retaliate against an indi-  
3 vidual because the individual exercises a right of the indi-  
4 vidual under this Act, including by—

5 (1) denying goods or services to the individual;

6 (2) charging the individual different prices or  
7 rates for goods or services, including by using dis-  
8 counts or other benefits or imposing penalties;

9 (3) providing a different level or quality of  
10 goods or services to the individual; or

11 (4) suggesting that the individual will receive a  
12 different price or rate for goods or services or a dif-  
13 ferent level or quality of goods or services.

14 **SEC. 6. ENFORCEMENT.**

15 (a) **ENFORCEMENT BY FEDERAL TRADE COMMIS-**  
16 **SION.—**

17 (1) **UNFAIR OR DECEPTIVE ACTS OR PRAC-**  
18 **TICES.—**A violation of this Act or a regulation pro-  
19 mulgated under this Act shall be treated as a viola-  
20 tion of a regulation under section 18(a)(1)(B) of the  
21 Federal Trade Commission Act (15 U.S.C.  
22 57a(a)(1)(B)) regarding unfair or deceptive acts or  
23 practices.

24 (2) **POWERS OF COMMISSION.—**Except as pro-  
25 vided in section 7(6)(A)(ii), the Commission shall  
26 enforce this Act and the regulations promulgated



1 under this Act in the same manner, by the same  
2 means, and with the same jurisdiction, powers, and  
3 duties as though all applicable terms and provisions  
4 of the Federal Trade Commission Act (15 U.S.C. 41  
5 et seq.) were incorporated into and made a part of  
6 this Act, and any regulated entity that violates this  
7 Act or a regulation promulgated under this Act shall  
8 be subject to the penalties and entitled to the privi-  
9 leges and immunities provided in the Federal Trade  
10 Commission Act.

11 (3) RULEMAKING AUTHORITY.—The Commis-  
12 sion may promulgate regulations under section 553  
13 of title 5, United States Code, to implement this  
14 Act.

15 (b) ENFORCEMENT BY INDIVIDUALS.—

16 (1) IN GENERAL.—Any individual alleging a  
17 violation of this Act or a regulation promulgated  
18 under this Act may bring a civil action in any court  
19 of competent jurisdiction.

20 (2) RELIEF.—In a civil action brought under  
21 paragraph (1) in which the plaintiff prevails, the  
22 court may award—

23 (A) an amount not less than \$100 and not  
24 greater than \$1,000 per violation per day, or  
25 actual damages, whichever is greater;

1 (B) punitive damages;

2 (C) reasonable attorney's fees and litigation costs; and

3  
4 (D) any other relief, including equitable or  
5 declaratory relief, that the court determines appropriate.  
6

7 (3) INJURY IN FACT.—A violation of this Act,  
8 or a regulation promulgated under this Act, with respect  
9 to personal reproductive or sexual health information  
10 constitutes a concrete and particularized injury  
11 in fact to the individual to whom such information  
12 relates.

13 (4) INVALIDITY OF PRE-DISPUTE ARBITRATION  
14 AGREEMENTS AND PRE-DISPUTE JOINT ACTION  
15 WAIVERS.—

16 (A) IN GENERAL.—Notwithstanding any  
17 other provision of law, no pre-dispute arbitration  
18 agreement or pre-dispute joint-action waiver  
19 shall be valid or enforceable with respect to  
20 a dispute arising under this Act.

21 (B) APPLICABILITY.—Any determination  
22 as to whether or how this paragraph applies to  
23 any dispute shall be made by a court, rather  
24 than an arbitrator, without regard to whether

1           such agreement purports to delegate such deter-  
2           mination to an arbitrator.

3           (C) DEFINITIONS.—For purposes of this  
4           paragraph:

5                   (i)     PRE-DISPUTE     ARBITRATION  
6                   AGREEMENT.—The term “pre-dispute arbi-  
7                   tration agreement” means any agreement  
8                   to arbitrate a dispute that has not arisen  
9                   at the time of the making of the agree-  
10                  ment.

11                   (ii)    PRE-DISPUTE     JOINT-ACTION  
12                   WAIVER.—The term “pre-dispute joint-ac-  
13                   tion waiver” means an agreement that  
14                   would prohibit a party from participating  
15                   in a joint, class, or collective action in a ju-  
16                   dicial, arbitral, administrative, or other  
17                   forum, concerning a dispute that has not  
18                   arisen at the time of the making of the  
19                   agreement.

20   **SEC. 7. DEFINITIONS.**

21       In this Act:

22           (1) COLLECT.—The term “collect” means, with  
23       respect to personal reproductive or sexual health in-  
24       formation, for a regulated entity to obtain such in-  
25       formation in any manner.

1           (2) COMMISSION.—The term “Commission”  
2 means the Federal Trade Commission.

3           (3) DISCLOSE.—The term “disclose” means,  
4 with respect to personal reproductive or sexual  
5 health information, for a regulated entity to release,  
6 transfer, sell, provide access to, license, or divulge  
7 such information in any manner to a third party or  
8 government entity.

9           (4) PERSONAL INFORMATION.—The term “per-  
10 sonal information” means information that identi-  
11 fies, relates to, describes, is reasonably capable of  
12 being associated with, or could reasonably be linked,  
13 directly or indirectly, with a particular individual,  
14 household, or device.

15           (5) PERSONAL REPRODUCTIVE OR SEXUAL  
16 HEALTH INFORMATION.—The term “personal repro-  
17 ductive or sexual health information” means per-  
18 sonal information relating to the past, present, or  
19 future reproductive or sexual health of an individual,  
20 including—

21           (A) efforts to research or obtain reproduc-  
22 tive or sexual health information, services, or  
23 supplies, including location information that  
24 might indicate an attempt to acquire or receive  
25 such information, services, or supplies;

1 (B) reproductive or sexual health condi-  
2 tions, status, diseases, or diagnoses, including  
3 pregnancy and pregnancy-related conditions,  
4 menstruation, ovulation, ability to conceive a  
5 pregnancy, whether such individual is sexually  
6 active, and whether such individual is engaging  
7 in unprotected sex;

8 (C) reproductive- and sexual-health-related  
9 surgeries or procedures, including abortion;

10 (D) use or purchase of contraceptives,  
11 medication abortion, or any other drug, device,  
12 or materials related to reproductive health;

13 (E) bodily functions, vital signs, measure-  
14 ment, or symptoms related to menstruation or  
15 pregnancy, such as basal temperature, cramps,  
16 bodily discharge, or hormone levels;

17 (F) any information about diagnoses or di-  
18 agnostic testing, treatment, medications, or the  
19 purchase or use of any product or service relat-  
20 ing to the matters described in subparagraphs  
21 (A) through (E); and

22 (G) any information described in subpara-  
23 graphs (A) through (F) that is derived or ex-  
24 trapolated from non-health information, includ-

1 ing proxy, derivative, inferred, emergent, and  
2 algorithmic data.

3 (6) REGULATED ENTITY.—

4 (A) IN GENERAL.—The term “regulated  
5 entity” means any entity (to the extent such en-  
6 tity is engaged in activities in or affecting com-  
7 merce (as defined in section 4 of the Federal  
8 Trade Commission Act (15 U.S.C. 44))) that  
9 is—

10 (i) a person, partnership, or corpora-  
11 tion subject to the jurisdiction of the Com-  
12 mission under section 5(a)(2) of the Fed-  
13 eral Trade Commission Act (15 U.S.C.  
14 45(a)(2)); or

15 (ii) notwithstanding section 4, 5(a)(2),  
16 or 6 of the Federal Trade Commission Act  
17 (15 U.S.C. 44; 45(a)(2); 46) or any juris-  
18 dictional limitation of the Commission—

19 (I) a common carrier subject to  
20 the Communications Act of 1934 (47  
21 U.S.C. 151 et seq.) and all Acts  
22 amendatory thereof and supple-  
23 mentary thereto; or

1 (II) an organization not orga-  
2 nized to carry on business for its own  
3 profit or that of its members.

4 (B) EXCLUSIONS.—The term “regulated  
5 entity” does not include—

6 (i) an entity that is a covered entity,  
7 as defined in section 160.103 of title 45,  
8 Code of Federal Regulations (or any suc-  
9 cessor to such regulation), to the extent  
10 such entity is acting as a covered entity  
11 under the HIPAA privacy regulations (as  
12 defined in section 1180(b)(3) of the Social  
13 Security Act (42 U.S.C. 1320d–9(b)(3)));

14 (ii) an entity that is a business asso-  
15 ciate, as defined in section 160.103 of title  
16 45, Code of Federal Regulations (or any  
17 successor to such regulation), to the extent  
18 such entity is acting as a business asso-  
19 ciate under the HIPAA privacy regulations  
20 (as defined in such section 1180(b)(3)); or

21 (iii) an entity that is subject to re-  
22 strictions on disclosure of records under  
23 section 543 of the Public Health Service  
24 Act (42 U.S.C. 290dd–2), to the extent

1           such entity is acting in a capacity subject  
2           to such restrictions.

3       (7) SERVICE PROVIDER.—

4           (A) IN GENERAL.—The term “service pro-  
5       vider” means a person who—

6           (i) collects, retains, uses, or discloses  
7           personal reproductive or sexual health in-  
8           formation for the sole purpose of, and only  
9           to the extent that such person is, con-  
10          ducting business activities on behalf of, for  
11          the benefit of, under instruction of, and  
12          under contractual agreement with a regu-  
13          lated entity and not any other individual or  
14          entity; and

15          (ii) does not divulge personal repro-  
16          ductive or sexual health information to any  
17          individual or entity other than such regu-  
18          lated entity or a contractor to such service  
19          provider bound to information processing  
20          terms no less restrictive than terms to  
21          which such service provider is bound.

22          (B) LIMITATION OF APPLICATION.—Such  
23       person shall only be considered a service pro-  
24       vider in the course of activities described in  
25       subparagraph (A)(i).



1 (C) MINIMIZATION BY SERVICE PRO-  
 2 VIDERS.—For purposes of compliance with sec-  
 3 tion 2 by a service provider of a regulated enti-  
 4 ty, a request from an individual to such regu-  
 5 lated entity for a product or service shall be  
 6 treated as having also been provided to such  
 7 service provider.

8 (8) THIRD PARTY.—The term “third party”  
 9 means, with respect to the disclosing or collecting of  
 10 personal reproductive or sexual health information,  
 11 any person who is not—

12 (A) the regulated entity that is disclosing  
 13 or collecting such information;

14 (B) the individual to whom such informa-  
 15 tion relates; or

16 (C) a service provider.

17 **SEC. 8. RULE OF CONSTRUCTION.**

18 Nothing in this Act shall be construed to limit or di-  
 19 minish First Amendment freedoms guaranteed under the  
 20 Constitution.

21 **SEC. 9. RELATIONSHIP TO FEDERAL AND STATE LAWS.**

22 (a) FEDERAL LAW PRESERVATION.—Nothing in this  
 23 Act, or a regulation promulgated under this Act, shall be  
 24 construed to limit any other provision of Federal law, ex-  
 25 cept as specifically provided in this Act.

1 (b) STATE LAW PRESERVATION.—

2 (1) IN GENERAL.—Nothing in this Act, or a  
3 regulation promulgated under this Act, shall be con-  
4 strued to preempt, displace, or supplant any State  
5 law, except to the extent that a provision of State  
6 law conflicts with a provision of this Act, or a regu-  
7 lation promulgated under this Act, and then only to  
8 the extent of the conflict.

9 (2) GREATER PROTECTION UNDER STATE  
10 LAW.—For purposes of this subsection, a provision  
11 of State law does not conflict with a provision of this  
12 Act, or a regulation promulgated under this Act, if  
13 such provision of State law provides greater privacy  
14 protection than the privacy protection provided by  
15 such provision of this Act or such regulation.

16 **SEC. 10. SAVINGS CLAUSE.**

17 Nothing in this Act shall be construed to limit the  
18 authority of the Commission under any other provision of  
19 law. Nothing in this Act, or a regulation promulgated  
20 under this Act, shall be construed to prohibit a regulated  
21 entity from disclosing personal reproductive or sexual  
22 health information to the Commission as required by law,  
23 in compliance with a court order, or in compliance with  
24 a civil investigative demand or similar process authorized  
25 under law.

1 **SEC. 11. SEVERABILITY CLAUSE.**

2       If any provision of this Act, or the application thereof  
3 to any person or circumstance, is held invalid, the remain-  
4 der of this Act, and the application of such provision to  
5 other persons not similarly situated or to other cir-  
6 cumstances, shall not be affected by the invalidation.

○